

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSHUA N. BANASIAK,

Plaintiff,

v.

WARDEN BRIAN WILLIAMS,

Defendant.

Case No. 3:20-cv-00414-MMD-CLB

ORDER

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by Joshua N. Banasiak, an incarcerated person at Ely State Prison. (ECF No. 1-1.) On July 10, 2020, this Court issued an order denying the Plaintiff's application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (ECF No. 3 at 2.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400 on or before September 8, 2020. (*Id.* at 3.) The September 8, 2020, deadline has now expired, and Plaintiff has not filed another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856

1 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule  
2 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*  
3 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with  
4 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming  
5 dismissal for lack of prosecution and failure to comply with local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey  
7 a court order, or failure to comply with local rules, the Court must consider several factors:  
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See  
11 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
12 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously  
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
19 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
20 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the  
21 court's order will result in dismissal satisfies the "consideration of alternatives"  
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
23 at 1424.

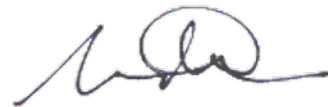
24 The Court's order requiring Plaintiff to file another application to proceed *in forma*  
25 *pauperis* or pay the full filing fee on or before September 8, 2020, expressly stated: "IT IS  
26 FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed  
27 *in forma pauperis* with all three documents or pay the full \$400 filing fee for a civil action  
28 on or before September 8, 2020, the Court will dismiss this action without prejudice for

1 Plaintiff to refile the case with the Court, under a new case number, when Plaintiff has all  
2 three documents needed to file a complete application to proceed *in forma pauperis*.” (ECF  
3 No. 3 at 3.) Thus, Plaintiff had adequate warning that dismissal would result from his  
4 noncompliance with the Court’s order to file another application to proceed *in forma*  
5 *pauperis* or pay the full filing fee on or before September 8, 2020.

6 It is therefore ordered that this action is dismissed without prejudice based on  
7 Plaintiff’s failure to file another application to proceed *in forma pauperis* or pay the full filing  
8 fee in compliance with this Court’s July 10, 2020, order (ECF No. 3).

9 It is further ordered that the Clerk of Court will close the case and enter judgment  
10 accordingly.

11 DATED THIS 15<sup>th</sup> day of September 2020.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE  
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